

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Del D. Borgsdorf

**SUBJECT:** SEE BELOW

**DATE:** March 29, 2005

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**SUBJECT: LEASE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND  
CIRQUE DU SOLEIL AMERICA, INC. FOR A TOURING SHOW IN SAN JOSE IN  
2006**

## RECOMMENDATION

- (a) Authorization to the City Manager to negotiate and execute a lease agreement with Cirque du Soleil for the purpose of leasing portions of the City's "E" Parking Lot (Taylor/San Pedro/Mission) to Cirque du Soleil from December 5, 2005 to March 10, 2006 to allow Cirque du Soleil to present to the public its touring show.
- (b) Direction to staff to begin the permitting process required to authorize use of the "E" Parking Lot for Cirque du Soleil's touring show, which will include community outreach and City employee and public parking plans, and that the City hold a public hearing to consider the Conditional Use Permit for this site by August 5, 2005.
- (c) Refer to the 2005-2006 Budget Process the appropriation of \$60,000 to be used by the City for its share of costs for site preparation, utility connections and site restoration as needed.

## BACKGROUND

Cirque du Soleil has conducted touring show performances in downtown San Jose since 1990. Beginning in 1999, Cirque du Soleil utilized the San Jose Water Company property on West Santa Clara Street for its shows. Because of size limitations on the Water Company site, its "Varekai" show was held in the Market/Balbach Parking Lot, south of the Convention Center in 2003.

Given new development in the downtown area, and the lack of space that would accommodate its size requirements, Cirque has requested that the City's large "E" parking lot adjacent to Taylor Street/San Pedro Avenue/Mission Street be considered. This site was selected after an extensive review of many potential sites near the downtown, as well as consideration by Cirque executives of the use of the County Fairgrounds on Tully Road.

## ANALYSIS

On March 23, 2005 an informational memorandum was presented to the Council that described the process that resulted in the recommendation to consider the City's "E" Parking Lot for

March 29, 2005

**Subject: Lease Agreement between the City of San Jose and Cirque du Soleil America, Inc. for a Touring Show in San Jose in 2006**

Page 2 of 4

Cirque du Soleil's Winter 2005-06 touring show. The actual event dates are January 19, 2006 through March 5, 2006. Shows will occur on weekend days and evenings, and weekday afternoons and evenings except Mondays. A total of 60 shows are planned which are expected to attract over 170,000 patrons.

Cirque requested this site due to its close proximity to the downtown, easy access from local streets and freeways, nearby bus and light rail access, and abundance of evening and weekend parking. Since the touring dates occur after the City's move from the existing City Hall to the new City Hall downtown, a significant number of parking spaces will be freed up in City lots and the County Parking Structure on Hedding Street. These lots will become available to relocate City employees and to provide public parking for the events. The County's public parking garage will only be available weekdays, and will not be opened on weekends. Cirque du Soleil officials are aware of this. In addition, large supplies of on-street parking and private parking facilities are available within short walking distances of the site. If the City or private parking operators decide to charge for parking, Cirque du Soleil officials will not be seeking any revenue, nor will they be operating any parking except controlling access into a possible VIP parking area.

Initial public outreach has been conducted by staff including outreach to community leaders, nearby residents and Japantown Business association members, of the potential that these events will be held at the City's "E" Lot. The community leaders are in support, as long as quality of life is not impacted in surrounding neighborhoods. Staff and Cirque officials plan to work with the surrounding community, including the County of Santa Clara, private parking lot owners, the VTA and shuttle operators to maximize the transportation alternatives and minimize impacts to residents and businesses. A public hearing will be held by the Planning Commission as early as May to receive more community input. Close coordination will also occur with the Downtown Business Association.

Site preparation responsibilities will be divided among Cirque du Soleil contractors and City staff. The City will remove five light poles and concrete bases and provide asphalt patches in these locations. The lease requires the City to complete its site preparation work prior to the first day of the site occupation period, which is December 5, 2005. The City agrees to indemnify Cirque for any breach of the lease or the breach of any representation or warranty contained in the lease. Failure of the City to complete the work and deliver the site to Cirque du Soleil may impact the schedule of performances and expose the City to damages for breach of the lease. The lease provides indemnification to the City for Cirque du Soleil's use of the "E" Parking Lot and ensures that Cirque will provide the appropriate insurance at its own cost and expense.

Cirque du Soleil will have all underground utilities identified, install fencing, remove curbs, and install asphalt curbs, ramps and leveling pads as necessary. It is estimated Cirque du Soleil will expend in excess of \$100,000 for all site work and utility connections. The City is expected to expend approximately \$60,000 for its share of construction activities.

There are some small trees (approximately 13) in the parking lot planted approximately 10 years ago that will need to be removed. All large and significant trees have been identified for

March 29, 2005

**Subject: Lease Agreement between the City of San Jose and Cirque du Soleil America, Inc. for a Touring Show in San Jose in 2006**

Page 3 of 4

protection. The City will be responsible for tree removal as well as tree replacement. The City will likely look to relocate or replace the trees at nearby locations, such as adjacent to sidewalks in the vicinity of the site. Cirque du Soleil is responsible for leaving the lot in a clean and debris-free state. Depending upon a final determination of the future use of the "E" Parking Lot, the City will be responsible to restore the facility to its desired state.

### **OUTCOMES**

The positive outcomes of hosting the Cirque du Soleil 2006 tour include bringing a unique cultural experience to San Jose, creating a positive impact on the local economy, and developing a transportation and communications plan that minimizes the impacts on local residents and businesses.

### **PUBLIC OUTREACH**

On March 1, 2005, Vice Mayor Chavez, staff from the Mayor's Office, and City staff held a conference call with approximately 10 community leaders representing 6 adjacent neighborhood and business associations. A follow-up email was sent to additional neighborhood leaders informing them of the proposed location of Cirque du Soleil at the City's "E" Lot. Overall, feedback was positive regarding Cirque du Soleil coming to this site. Concerns were raised regarding parking overflow into the neighborhoods and traffic impacts on some of the surrounding streets. Additional outreach regarding these items will occur as part of the permitting process, as outlined above.

### **COORDINATION**

This memorandum has been coordinated with the Office of Economic Development, the Departments of Transportation, Public Works, Planning, Building & Code Enforcement, the Redevelopment Agency, the Police Department and the City Attorney's Office.

### **COST IMPLICATIONS**

The City will not be seeking rent from Cirque du Soleil for the term of this lease. It is expected that the special economic benefits this show will bring to San Jose will offset all rent considerations. It should also be noted that Cirque du Soleil officials are making a significant contribution toward all site construction activities.

It is estimated that an appropriation of \$60,000 will be needed on a one-time basis in the 2005-06 Capital Budget to provide sufficient funds for the City's share of site preparation, utility connections, tree replacement and site restoration. There is a potential of the City selling public parking on its facilities whereby revenue would be generated.

HONORABLE MAYOR AND COUNCIL

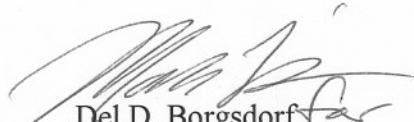
March 29, 2005

**Subject: Lease Agreement between the City of San Jose and Cirque du Soleil America, Inc. for a Touring Show in San Jose in 2006**

Page 4 of 4

**CEQA**

Exempt, File No. PP05-055

  
Del D. Borgsdorf